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May 21, 2010

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled “Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program” (RIN: 2070-AJ55). We received the rule on April 28, 2010. It was published in the *Federal Register* as a final rule on May 6, 2010. 75 Fed. Reg. 24,802. The final rule is effective July 6, 2010.

The final rule revises the Lead Renovation, Repair, and Painting Program (RRP) rule that was published in the *Federal Register* on April 22, 2008. The final rule eliminates the “opt-out” provision that currently exempts a renovation firm from the training and work practice requirements of the rule where the firm obtains a certification from the owner of a residence that no child under age 6 or pregnant woman resides in the home and the home is not a child-occupied facility. The final rule also requires renovation firms to provide a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule to the owner and, if different, the occupant of the building being renovated or the operator of the child-occupied facility. In addition, the final rule makes minor changes to the certification, accreditation, and state authorization requirements.

Enclosed is our assessment of EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that EPA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nicole Owens
Director, Regulatory
Management Division
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"LEAD; AMENDMENT TO THE OPT-OUT AND
RECORDKEEPING PROVISIONS IN THE RENOVATION,
REPAIR, AND PAINTING PROGRAM"
(RIN: 2070-AJ55)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis in conjunction with the final rule. The benefits of the final rule result from the prevention of adverse health affects attributable to lead exposure from renovations in pre-1978 buildings. The adverse health affects include impaired cognitive function in children and several illnesses in children and adults, such as increased cardiovascular outcomes (including increased blood pressure, increased incidence of hypertension, cardiovascular morbidity, and mortality) and decreased kidney function. EPA determined that annualized benefits from the final rule may range from approximately \$870 million to \$3.2 billion assuming a discount rate of 3 percent, and \$920 million to \$3.3 billion assuming a discount rate of 7 percent.

The costs of the final rule result from removing the opt-out provision and requiring firms performing renovation, repair, and painting work for compensation in housing previously eligible for the opt-out provision to follow the training, certification, and work practice requirements of the Lead Renovation, Repair, and Painting (RRP) rule. In addition, the final rule adds recordkeeping requirements that will increase costs of renovations in all target housing and child-occupied facilities. EPA estimates that the final rule will cost approximately \$500 million in the first year, with the cost expected to drop to approximately \$300 million per year starting with the second year, when improved test kits for detecting the presence of lead-based paint are assumed to become available. Training for renovators and workers and certification for firms working in housing previously covered by the opt-out provision is estimated to add approximately \$50 million per year to the cost, and requiring renovators to provide owners and occupants with copies of the recordkeeping required to document compliance with the RRP rule training and work practice requirements costs approximately \$30 million per year, with about two-thirds incurred in housing that was previously eligible for the opt-out provision.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

EPA prepared a final regulatory flexibility analysis for the final rule. EPA determined that the vast majority of the entities in the industries affected by this rule are small, and that the rule will affect approximately 289,000 small entities. EPA determined that an estimated 101,000 small businesses could be affected by the removal of the opt-out provision, with average impacts of 1.10 percent of revenues. EPA further determined that an estimated 189,000 small entities could be affected solely by the additional recordkeeping requirement, with incremental cost impacts ranging from 0.0001 percent to 0.08 percent of revenues. Combining the removal of the opt-out provision with the new recordkeeping requirements, a total of 289,000 small entities could be affected by the rule, including 266,000 small businesses with average impacts of 0.4 percent, 17,000 small non-profits with average impacts of 0.0005 percent, and 6,000 small governments with average impacts of 0.0001 percent.

The removal of the opt-out provision will also affect an estimated 75,000 non-employer renovation contractors, with an average cost to such contractors estimated to be \$1,193 apiece, which represents 1.3 percent to 4.7 percent of reported revenues, depending on the industry sector. The new recordkeeping requirement is estimated to affect approximately 96,000 additional non-employer renovation contractors, with an average estimated cost of \$42 apiece, which represents 0.05 percent to 0.17 percent of reported revenues, depending on the industry sector.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

EPA determined that this final rule contains a federal mandate that may result in expenditures that exceed \$100 million by the private sector in any one year, but will not result in such expenditures by state, local, and tribal governments in the aggregate.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

EPA published a notice of proposed rulemaking on October 28, 2009. 74 Fed. Reg. 55,506. EPA received comments on the proposed rule and responded to those comments in the final rule. 75 Fed. Reg. 24,802.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements that are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act. EPA has submitted the requirements to OMB for approval, and they have been assigned OMB Control Number 2070-0155. EPA determined that the information collection

requirements may affect training providers as well as firms that perform renovation, repair, or painting for compensation. EPA estimates that the total respondent burden for training providers and certified firms from the final rule will average approximately 1,647,000 hours per year during the 3 years covered by the information collection request.

Statutory authorization for the rule

The final rule is authorized by sections 402(c)(3), 404, 406, and 407 of the Toxic Substances Control Act, codified at 15 U.S.C. §§ 2682(c)(3), 2684, 2686, and 2687.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule was determined by EPA to be significant under Executive Order 12,866 and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

EPA determined that the final rule does not have “federalism implications” because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.